

NOTE: The court has reviewed the objections below and has indicated in highlighting and bolded letters the objections that are sustained. Such objections are sustained in their entirety unless noted otherwise (in which case they are sustained only as to certain portions of the deposition in question, as noted). All other objections overruled. /s/ Richard G. Stearns

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

R. G. Stearns DT
1-26-18

58 SWANSEA MALL DRIVE, LLC,

Plaintiff,

v.

GATOR SWANSEA PROPERTY, LLC

Defendant.

Civil Action No. 15-cv-13538-RGS

**PLAINTIFF'S REQUEST FOR RULINGS ON OBJECTIONS AND
NOTICE OF COUNTER-DESIGNATIONS OF DEPOSITION TESTIMONY**

Plaintiff 58 Swansea Mall Drive, LLC ("58 Swansea") respectfully submits this
(1) request for rulings on objections, and (2) notice of counter-designations, in response to the
deposition designations of Defendant Gator Swansea Property, LLC ("Gator"), as follows:

Request for Rulings on Objections

58 Swansea has attached, as Exhibits A through E, pertinent pages from the deposition transcripts marking objected-to testimony and stating the grounds for each objection. Many objections arise from Gator's effort to relitigate issues resolved by this Court at the summary judgment stage.¹ 58 Swansea respectfully requests rulings on the following objections:

¹ For example, with respect to insurance, the Court left open for trial an issue about the effect, if any, of Gator raising, after the commencement of this action, an alleged disparity between how insurance proceeds would be paid under the Leasehold Mortgage and how they would be paid under the Ground Lease. The Court foreclosed, however, other insurance issues such as whether 58 Swansea was in default under the Ground Lease because of any alleged gap in insurance coverage or for providing a purportedly false certificate of insurance. *See* 8/25/17 Order at 9-10 ("Gator offers nothing that proves that this default was 'beyond the applicable grace period,'" and none of its cited support "place[d] 58 Swansea on notice of a default, as required by Article 12, Section 1(b)(ii) of the lease," and "Gator thus cannot prevail on this argument."); *id.* at 10 n. ("Gator has offered no evidence suggesting that 58 Swansea knew of the alleged gaps in insurance coverage at the time the certificates were provided.").

Deposition of Jack Corwin 3-27-17 (objected-to portions attached as Exhibit A)

69:8-70:11 Relevance
83:12-84:2 Relevance
85:9-86:6 Relevance; Lacks Foundation; Hearsay
93:21-94:22 Relevance; Lacks Foundation; Hearsay
179:1-15 Relevance
181:24-183:22 Relevance
189:7-190:2 Relevance
197:1-5 Relevance
210:20-211:12 Relevance
214:21-215:17 Relevance
224:11-225:21 Relevance

Deposition of Jack Corwin 3-28-17 (objected-to portions attached as Exhibit B)

339:6-19 Relevance
341:13-20 Relevance
669:11-21 Relevance

Deposition of Coulton Brooks 11-14-16 (objected-to portions attached as Exhibit C)

32:18-33:3 Relevance
35:7-36:4 Relevance -- as to lines 35:6-15
40:7-12 Relevance
104:16-105:15 Relevance
120:17-19 Relevance
130:4-6 Incomplete, Relevance
132:5-20 Relevance, Lacks Foundation
135:23-136:7 Relevance
136:18-137:17 Relevance
137:22-138:4 Relevance, Lacks Foundation
139:7-23 Relevance
142:2-9 Relevance
142:25-144:18 Relevance
151:9-153:2 Relevance
153:18-156:1 Relevance
156:21 Relevance
157:4-10 Relevance
157:18-158:18 Relevance
160:3-12 Relevance
161:9-13 Relevance, Lacks Foundation
161:24-162:12 Relevance
165:2-22 Relevance
184:18-20 Relevance
188:3-19 Relevance

Deposition of Coulton Brooks 2-16-17 (objected-to portions attached as Exhibit D)

241:7-17 Relevance
242:10-15 Relevance
267:13-268:7 Relevance
269:1-5 Relevance
271:20-24 Relevance
272:2-273:7 Relevance

Deposition of Gabe Wilson 11-17-16 (objected-to portions attached as Exhibit E)

37:16-23 Relevance
38:7-25 Relevance
40:8-10 Relevance
40:24-25 Relevance
48:3-8 Incomplete
49:25-50:15 Relevance, Incomplete
50:1-51:3 Relevance, Incomplete
54:1422 Incompressible Citation²
63:2-2 Incomplete
77:25-78 Incompressible Citation
78:17-3 Incompressible Citation
80:8-17 Relevance
81:12-84:22 Relevance
85:2-22 Relevance
86:3-17 Relevance
87:8-88:25 Relevance
90:9-21 Relevance
91:5-21 Relevance - as to lines 18-21
92:5 Relevance
93:12-18 Relevance
97:15-19 Relevance, Lacks Foundation
98:1-4 Relevance, Lacks Foundation
98:22-99:5 Relevance, Lacks Foundation
99:24-100:5 Relevance, Lacks Foundation
100:10-13 Relevance, Lacks Foundation
100:25-101:24 Relevance, Lacks Foundation
102:12-13 Relevance, Lacks Foundation
102:16-17 Relevance, Lacks Foundation

² Gator's designations from the Deposition of Gabe Wilson include certain incomprehensible citations including 54:1422, 77:25-78, 78:17-3 to which a further response cannot be formulated. Based on objections to nearby testimony, 58 Swansea raises relevance, lack of foundation and incompleteness objections.

102:20 Relevance, Lacks Foundation
102:22-103:24 Relevance, Lacks Foundation
106:24-107:1 Relevance, Lacks Foundation
107:17-109:1 Relevance, Lacks Foundation
109:8-16 Relevance, Lacks Foundation
109:8-19 Relevance, Lacks Foundation
109:21-23 Relevance, Lacks Foundation
113:13-18 Relevance, Lacks Foundation
113:25-114:2 Relevance, Lacks Foundation
114:6-8 Relevance, Lacks Foundation
114:10-12 Relevance, Lacks Foundation - overrule from
Lines 114:10-16
**114-16-115:4 Relevance, Lacks Foundation -- sustain
objection to lines 18-25 and 115:1-4**
115:7-13 Relevance, Lacks Foundation
117:6-13 Relevance
123:14-124:9 Relevance
125:13-126:9, 11 Relevance - sustain as to 126:7-11
127:22-128:24 Relevance - sustain as to 127:23-25,
128:1-8
129:5 Relevance
129:14-17 Relevance
129:22-130:1 Relevance
131:19-132:13 Relevance
133:5-8 Relevance
141:6-10 Relevance, Lacks Foundation
147:20-148:23 Relevance
151:19 Relevance
153:8-12 Relevance
153:25-154:5 Relevance
160:22-161:22 Relevance - sustain as to 161:15-22
162:1-164:5 Relevance
164:10-19 Relevance
165:1-9 Relevance
165:21-24 Relevance
173:6 Relevance
173:14-175:14 Relevance - sustain as to 175:9-14
**175:19-25 Relevance, Lacks Foundation - sustain as to
lines 175:19-21**
176:1 Relevance
176:22-177:10 Relevance
177:14-24 Relevance
178:12-18 Relevance

References to Deposition Exhibits

58 Swansea objects to each of the exhibit designations made by Gator in connection with its deposition designations as improper. These vague and ambiguous designations are contrary to the Order of the Court that established a separate schedule for the marking and submission of agreed-upon and objected-to trial exhibits

Counter-Designations

By way of counter-designations in response to Gator's deposition designations, 58 Swansea incorporates by reference its own deposition designations filed January 19, 2018 and provides additional counter-designations as follows:

Deposition of Jack Corwin 3-27-17

72:10-16
72:19-24
95:18-96:10
100:8-13
105:23-106:15
111:4-14
114:7-19
117:12-23
119:12-22
127:14-128:2
177:24-25
188:16-25
202:9-10

Deposition of Jack Corwin 3-28-17

618:5-7
620:24-621:10
627:7-19
666:20-667:7

Deposition of Coulton Brooks 11-14-16

67:5-24
73:13-75:22
78:21-81:23
107:21-108:9
113:2-9
116:4-11
124:8-125:6

Deposition of Coulton Brooks 2-16-17

238:12-20
240:7-9
240:19-23
244:2-246:12
252:7-14
253:5-22
262:24-263:12
280:5-281:4
282:14-283:5
285:5-12
288:9-289:5
289:9-289:15

Deposition of Gabe Wilson 11-17-16

46:3-10
52:6-13
52:15-53:3
69:13-16
77:6-17
136:24-137:14
146:16
185:1-25
187:7-20
189:10-25
190:9-15
193:10-16
202:1-10
216:5-21

Deposition of Mike Marcone 2-24-17

15:8-16:6
17:3-9
33:19-34:7
40:19-25
43:8-44:5
48:5-17
59:1-7
60:10-18
74:5-8
74:15-75:1
79:3-21
80:9-81:5

87:3-18
98:21-99:12
101:22-102:9
103:5-10
109:23-110:21
120:9-122:2
135:5-21
137:24-138:18
143:9-144:10
145:13-23
150:17-22
154:3-13
157:20-158:12
161:8-20
169:6-15
170:5-16
215:8-18
226:13-227:4
237:9-238:11
239:8-20

Respectfully submitted,
58 SWANSEA MALL DRIVE, LLC
By his attorney,

Dated: January 24, 2017

/s/ Barry S. Pollack
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 24, 2018.

/s/ Barry S. Pollack
Barry S. Pollack (BBO #642064)